

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED  
OCT 29 2002

FORETHOUGHT FINANCIAL SERVICES, INC.,

Plaintiff,

v.

MARGARET McANDREWS and  
BRIAN McANDREWS,

Defendants.

Case No. 02C 7757

JUDGE SCOTTSCHALL

MAGISTRATE JUDGE SCHENKIER

U.S. DISTRICT COURT

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FILED-ED4

**COMPLAINT FOR DECLARATORY RELIEF AND TO ENFORCE SETTLEMENT AGREEMENT**

Plaintiff, Forethought Financial Services, Inc. ("Forethought" or the "Company"), by counsel, for its Complaint for Declaratory Relief and to Enforce Settlement Agreement against Defendants, Margaret McAndrews and Brian McAndrews (the "McAndrews"), states:

**I. FACTUAL BACKGROUND**

1. Forethought is a corporation duly organized and existing under the laws of the State of Indiana, with its principal place of business in Batesville, Indiana. It is a citizen and resident of the State of Indiana.

2. Margaret McAndrews was and is an employee of Forethought. The McAndrews are citizens and residents of the State of Wisconsin.

3. The amount in controversy exceeds \$75,000, exclusive of interest, cost and attorneys' fees.

4. This claim is brought pursuant to 28 U.S.C. § 2201, which provides in pertinent part that any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaratory relief,

whether or not further relief is or could be sought. Such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

5. On October 16 and 17, 2002, the parties to this claim met in Chicago, Illinois for the purposes of holding a mediation of a disputed claim with an independent mediator. This mediation culminated with an agreement as more specifically stated in the Settlement Terms Sheet.

6. Prior to October 16 and 17, 2002, the McAndrews had asserted a claim against Forethought arising out of an incident occurring in Indianapolis, Indiana where Margaret McAndrews was allegedly assaulted by another employee of Forethought following a Company event.

7. All parties decided to attempt to resolve their disputes and differences arising out of the incident in Indianapolis, Indiana through the mediation in Chicago, Illinois.

8. The mediation itself lasted some 16 hours. As indicated above, it ended in an agreement under which Forethought would pay a specified sum to the McAndrews in return for a general release. The pertinent portion of the Settlement Terms Sheet provides as follows:

2. General Release by Margaret McAndrews ("Employee") and Brian McAndrews to company and employees, agents, and corporate affiliates, specifically reserving all rights to assert claims against Mark Giesting.

9. Forethought has attempted to culminate the agreement through fulfillment of its obligations. However, the McAndrews have refused to fulfill their obligations under the mediated settlement agreement.

10. Specifically, the McAndrews have refused and failed to sign a General Release which would release the Company, its employees, agents, and corporate affiliates.

## **II. BREACH OF CONTRACT**

11. Plaintiff incorporates by reference as if fully set forth herein rhetorical paragraphs 1-10 above.

12. The McAndrews, pursuant to the contract, agreed, in exchange for the receipt of a certain payment of money, to provide a General Release to the Company, its employees, agents and corporate affiliates.

13. Forethought has fulfilled and is willing to fulfill all of its obligations under the mediated settlement agreement.

14. The McAndrews have failed and refused to comply with the mediated settlement agreement and have failed and refused to comply with the terms of the mediated settlement agreement as specifically provided for in the Settlement Terms Sheet.

## **III. DECLARATORY RELIEF**

15. Plaintiff incorporates by reference as if fully set forth herein rhetorical paragraphs 1-14 above.

16. Forethought, pursuant to 28 U.S.C. § 2201 requests that the court declare the rights and legal relations of the parties to this suit and provide the following relief:

(a) order that the mediated settlement agreement is enforceable and enforce the terms of the settlement agreement as specifically provided for in the Settlement Terms Sheet;

(b) order the McAndrews to sign a General Release releasing the Company, its employees, agents, and corporate affiliates;

(c) order the McAndrews to comply with the agreement to not commence any action against Forethought, its employees, agents, or corporate affiliates;

(d) order the McAndrews to pay all appropriate costs and attorneys' fees for the necessity to file such an action to enforce the mediated settlement agreement.

WHEREFORE, plaintiff, Forethought Financial Services, Inc., by counsel, prays for the above-requested relief, for the cost of this action, for attorneys' fees, and for all other proper and appropriate relief in the premises.

Respectfully submitted,

FORETHOUGHT FINANCIAL SERVICES, INC.

By: Charles B. Baldwin /cap  
One of Its Attorneys

Charles B. Baldwin, #4108-49  
Jan Michelsen  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
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Two First National Plaza  
Twenty-Fifth Floor  
Chicago, Illinois 60603  
(312) 558-1220

Date: October 28, 2002

JS 44  
(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

Forethought Financial Services, Inc.

## DEFENDANTS

Margaret M. Andrews and  
Brian McAndrews(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Charles B. Baldwin Carol A. Poplawski  
Jan Michelsen Ogletree Deakins Law Firm  
Ogletree Deakins Law Firm Two First National Plaza  
One Indiana Square Chicago, IL 60603  
Indianapolis, IN 46204 (312) 558-1220  
(317) 916-1300

## ATTORNEYS (IF KNOWN)

MAGISTRATE JUDGE SCHENKIER

DOCKETED  
OCT 29 2002

## II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

Declaratory action under 28 U.S.C. § 2201

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 382 Personal Injury—Med Malpractice <input type="checkbox"/> 385 Personal Injury—Product Liability <input type="checkbox"/> 388 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Pregs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395a) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMC/DMMW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions

## VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$ &gt; \$75,000 Check YES only if demanded in complaint:

Declaratory Relief JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE  
10/28/02 Charles B. Baldwin

SIGNATURE OF ATTORNEY OF RECORD

Charles B. Baldwin / car

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

Forethought Financial Services, Inc.,

v.

Margaret McAndrews and Brian McAndrews.

Case Number:

**02C 7757****DOCKE****OCT 29****JUDGE GOTTSCHALL**

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

FORETHOUGHT FINANCIAL SERVICES, INC.

MAGISTRATE JUDGE SCHENKIER

(A)		(B)	
SIGNATURE <i>Charles B. Baldwin /cat</i>	SIGNATURE <i>Carol A. Poplawski</i>		
NAME Charles B. Baldwin	NAME Carol A. Poplawski		
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MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
	DESIGNATED AS LOCAL COUNSEL? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
(C)		(D)	
SIGNATURE <i>Jan Michelsen /cat</i>	SIGNATURE		
NAME Jan Michelsen	NAME		
FIRM Ogletree, Deakins, Nash, Smoak & Stewart, P.C.	FIRM		
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IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
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TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		